

P.U. (A) 124 /1978
Signed: 16 September 1977
Effective: 1 January 1978

AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC

THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE
POLISH PEOPLE'S REPUBLIC

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

Have agreed as follows:

Article 1

PERSONAL SCOPE

The Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2

TAXES COVERED

1. The taxes which are the subject of this Agreement are:

(a) in the case of the Polish People's Republic--

- income tax (podatek dochodowy);
- tax on salaries and wages (podatek od wynagrodzen);
- equalisation tax (podatek wyrownawczy);
(hereinafter referred to as the "Polish tax").

(b) in the case of Malaysia--

- income tax and excess profit tax;
- supplementary income taxes, that is, tin profits tax, development tax and timber profits tax; and
- petroleum income tax;
(hereinafter referred to as "Malaysian Tax").

2. The Agreement shall also apply to any identical or substantially similar axes which are imposed in addition to, or in place of the existing taxes after the date of signature of this agreement. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective Taxation Laws.

Article 3

GENERAL DEFINITIONS

1. In this Agreement, unless the context otherwise requires:

- (a) the term "Malaysia" means the Federation of Malaysia and includes any area adjacent to the territorial waters of Malaysia which, in accordance with international law has been or may hereafter be designated under the laws of Malaysia as an area within which the rights of Malaysia with respect to the sea bed and sub-soil and their natural resources may be exercised;
- (b) the term "Poland" means the Polish People's Republic and includes any area adjacent to the territorial waters of Poland which, in accordance with international law has been or may hereafter be designated under the laws of Poland as an area within which the rights of Poland with respect to the sea bed and sub-soil and their natural resources may be exercised;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Poland or Malaysia as the context requires;
- (d) the term "person" shall have the meaning assigned to it in the Taxation Laws of the respective Contracting States;
- (e) the term "company" means any body corporate or any entity which is treated as a body corporate in the Taxation Laws of the respective Contracting States;
- (f) the term "tax" means Malaysian tax or Polish tax, as the context requires;
- (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term "competent authority" means:
 - 1. in Poland -- the Minister of Finance or his authorized representative;

2. in Malaysia -- the Minister of Finance or his authorized representative.

2. As regards the application of the Agreement by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Agreement.

Article 4

FISCAL DOMICILE

1. For the purposes of this Agreement,

(a) the term "resident of a Contracting State" means--

- in the case of Malaysia a person who is resident in Malaysia for the purposes of Malaysian tax; or
- in the case of Poland a person who is resident in Poland for the purposes of Polish tax;

(b) the terms "resident of a Contracting State" and "resident of the other Contracting State" mean a resident of Malaysia or a resident of Poland, as the context requires.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then this case shall be determined in accordance with the following rules:

- (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer/centre of vital interest;
- (b) if the Contracting State in which he has his centre of vital interest cannot be determined or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

- (d) if the question of residence cannot be determined according to the preceding subparagraphs, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, oil or gas well, quarry or other place of extraction of natural resources including timber or other forest produce;
- (g) a farm or plantation.

3. The term "permanent establishment" shall not be deemed to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on a business which consists of providing the services of public entertainers of the kind referred to in Article 16 in that other Contracting State.

5. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 6 applies) shall be deemed to be a permanent establishment in the first-mentioned Contracting State, if:

- (a) he has and habitually exercises in the first-mentioned Contracting State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for that enterprise;
- (b) he has no such authority, but maintains in the first-mentioned Contracting State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in the other Contracting State through a broker, general commission agent or any other agent of an independent status where such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State or which carries on business in that other Contracting State/whether through a permanent establishment or otherwise/shall not of itself constitute either company a permanent establishment of the other.

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income from immovable property shall be taxed in the Contracting State in which such property is situated.

2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil or gas wells, quarries and other places of extraction of natural resources or of timber or other forest produce. Ships, boats, and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.

4. The provisions of paragraph 1 and 3 shall apply also to the income from the immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article 7

BUSINESS INCOME OR PROFITS

1. The income or profits of an enterprise of a Contracting State shall be taxable only in that Contracting State, unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, tax may be imposed in that other Contracting States on the income or profits of the enterprise but only on so much thereof as is attributable to that permanent establishment.

2. Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the income or profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

3. In determining the income or profits of a permanent establishment, there shall be allowed as deductions all expenses, including executive and general administrative expenses, which would be deductible if the permanent establishment were an independent enterprise, in so far as they are reasonably allocable to the permanent establishment, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

4. No income or profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. Where income or profits include any item of income or profits which is dealt with separately in another Article of this Agreement, the provisions of that other Article shall not be affected by the provisions of this Article.

Article 8

ASSOCIATED ENTERPRISES

Where--

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any income or profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of these conditions have not so accrued, may be included in the income or profits of that enterprise and taxed accordingly.

Article 9

SHIPPING AND AIR TRANSPORT

1. Income derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.
2. The provisions of paragraph 1 shall also apply to income derived from the participation in a pool, a joint business or in an international operating agency.
3. For the purpose of this Agreement the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, other than such transport confined solely between places in the other Contracting State.

Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State shall be treated as derived from that Contracting State.
2. Dividends paid by a company resident in Poland to a resident of Malaysia who is subject to Malaysian tax in respect thereof shall be exempt from any tax in

Poland which is chargeable on dividends in addition to the tax chargeable in respect of the income of the company.

3. Dividends paid by a company resident in Malaysia to a resident of Poland who is subject to Polish tax in respect thereof shall be exempt from any tax in Malaysia which is chargeable on dividends in addition to the tax chargeable in respect of the income of the company:

Provided that nothing in this paragraph shall affect the provisions of the Malaysian law under which the tax in respect of a dividend paid by a company resident in Malaysia from which Malaysian tax has been, or has been deemed to be, deducted may be adjusted by reference to the rate of tax appropriate to the Malaysian year of assessment immediately following that in which the dividend was paid.

4. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, there shall not be imposed in that other Contracting State any form of taxation on dividends paid by the company to persons not resident in that other Contracting State, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

5. The provisions of paragraphs 2 and 3 of this Article shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, in which the company paying the dividends is resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such case, the provisions of Article 7 shall apply.

6. If the system of taxation applicable in either of the Contracting States to the income and distributions of companies is altered, the competent authorities may consult each other in order to determine whether it is necessary for this reason to amend the provisions of paragraphs 2 and 3 of this Article.

Article 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State but, if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 15 per cent of the amount of the interest.

3. Notwithstanding the provisions of paragraph 2 of this Article interest paid to a resident of Poland on an approved loan or a long term loan shall be exempt from Malaysian tax payable thereon.

4. The term "interest" as used in this Article and Article 20 means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 2 and 3 shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on in the other Contracting State in which the interest arises a trade or business through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such a case the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political sub-division, a local authority or statutory body thereof or a resident of that Contracting State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that Contracting State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 per cent of the amount of the royalties.

3. Notwithstanding the provisions of paragraph 2 of this Article, royalties paid to a resident of Poland by a resident of Malaysia and approved by the competent authority of Malaysia shall be exempt from Malaysian tax payable thereon.

4. Notwithstanding the provisions of paragraphs 2 and 3 of this Article, royalties of the kind referred to in paragraph 5 (b) of this Article may be taxed in accordance with the law of the Contracting State in which they arise.

5. The term "royalties" as used in this Article means payments of any kind received as a consideration for -

(a) the use of, or the right to use any patent, trade mark, design or model, plan, secret formula or process, any copyright of literary, artistic or scientific work, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience;

(b) the use of, or the right to use cinematograph films, or works recorded on tapes for television or broadcasting.

6. The provisions of paragraph 2 and 3 of this Article shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article 7 shall apply.

7. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political sub-division, a local authority or statutory body thereof or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

8. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right of information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

CAPITAL GAINS

1. Capital gains from the alienation of any movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) may be taxed in the other Contracting State.

2. Notwithstanding the provisions of paragraph 1 of this Article, capital gains derived by a resident of a Contracting State from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State.

3. Capital gains from the alienation of any property other than those mentioned in paragraph 1 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

BUSINESS VISITORS

1. Subject to the provisions of Article 17, an individual who is a resident of a Contracting State shall be exempt from tax in the other Contracting State on income in respect of an employment including independent professional service exercised in any calendar year in the other Contracting State, if—

- (a) he is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days during that year; and
- (b) the remuneration for his services is paid by or on behalf of a person who is not resident of the other Contracting State; and
- (c) the remuneration is not borne by a permanent establishment which that person has in the other Contracting State.

2. Notwithstanding the provisions of paragraph 1, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 15

DIRECTORS' FEES

Notwithstanding the provisions of Article 14, directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the

board of directors of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

Article 16

ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Article 14, income derived by public entertainers/such as stage, motion picture, radio or television artistes and musicians/or athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

2. Where the personal activities referred to in paragraph 1 are provided in a Contracting State by an enterprise of the other Contracting State, the profits derived from providing these activities by such an enterprise may be taxed in the first-mentioned Contracting State.

3. The provisions of paragraphs 1 and 2 shall not apply to remuneration or profits derived from activities exercised in a Contracting State if the visit to that Contracting State is directly or indirectly supported wholly or substantially from the public funds of the other Contracting State, a political sub-division, a local authority or statutory body thereof.

Article 17

GOVERNMENTAL FUNCTIONS

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to any individual in respect of services rendered to that Contracting State or political subdivision or local authority thereof shall be taxable only in that Contracting State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that Contracting State and the recipient is a resident of that other Contracting State who:

- (i) is a national of that Contracting State; or
- (ii) did not become a resident of that Contracting State solely for the purpose of performing the services.

2. Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to any individual in respect of services rendered to that Contracting State or political sub-division or local authority thereof shall be taxable only in that Contracting State.

3. The provisions of Articles 14 and 15 shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 18
STUDENTS

An individual who is a resident in a Contracting State and is temporarily present in the other Contracting State solely:

- (a) as a student at a university, college or school in the other Contracting State,
- (b) as a business or technical apprentice, or
- (c) as the recipient of a grant, allowance or award for the primary purpose of study or research from a religious, charitable, scientific or educational organization shall not be taxed in the other Contracting State in respect of remittances from abroad for the purposes of his maintenance, education or training or in respect of a scholarship grant. The same shall apply to any amount representing remuneration for services rendered in that other Contracting State, provided that such services are in connection with his studies or practical training or are necessary for the purpose of his maintenance.

Article 19
PROFESSORS AND TEACHERS

An individual who, at the invitation of a university, college, school or other similar recognised educational institutions in a Contracting State, visits that Contracting State, for a period not exceeding two years solely for the purpose of teaching or conducting research or both at such educational institution and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching or research in respect of which he is subject to tax in the other Contracting State.

Article 20
GOVERNMENT INCOME

1. The Government of a Contracting State shall be exempt from tax in the other Contracting State in respect of interest derived by such Government from that other Contracting State.

2. For the purposes of paragraph 1 of this Article, the term "Government"--

- (a) in the case of Malaysia means the Government of Malaysia and shall include--
- the governments of the States;
 - the local authorities;
 - the Bank Negara, Malaysia;
 - such institutions, the capital of which is wholly owned by the Government of Malaysia or the governments of the States or the local authorities, as may be agreed from time to time between the Governments of the two Contracting States.
- (b) in the case of Poland means the Government of the Polish People's Republic and shall include--
- the local authorities;
 - Narodowy Bank Polski;
 - Bank Handlowy w Warszawie S.A. to the extent that its activity is carried on within the scope of the normal authority of a central bank;
 - such institutions, the capital of which is wholly owned by the Government of the Polish People's Republic or the local authorities, as may be agreed from time to time between the governments of the two Contracting States.

Article 21

ELIMINATION OF DOUBLE TAXATION

1. Polish tax payable under the laws of Poland and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within Poland (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Malaysian tax computed by reference to the same profits, income or chargeable gains by reference to which the Polish tax is computed. Such credit shall be allowed in accordance with the existing provisions of the law of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in a territory outside Malaysia and any subsequent modification of those provisions which, however, shall not affect the principle hereof.

2. Where a resident of Poland derives profits, income or chargeable gains which, in accordance with the provisions of this Agreement, may be taxed in Malaysia, Poland shall allow as a deduction from the Polish tax on the profits, income or chargeable gains respectively of that person an amount equal to the tax paid in Malaysia on that profit, income or chargeable gain, as the case may be. Such deduction shall not, however, exceed that part of the Polish tax which is

appropriate to the profit, income or chargeable gain which may be taxed in Malaysia.

Article 22

NON-DISCRIMINATION

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities.

3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned Contracting State are or may be subjected.

4. Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that Contracting State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.

5. Moreover nothing contained in this Article shall be construed as obliging a Contracting State to grant to nationals of the other Contracting State not resident in the first-mentioned Contracting State those personal allowances, reliefs and reductions for tax purposes which are by law available on the date of signature of this Agreement only to nationals of the first-mentioned Contracting State or to such other persons specified therein who are not resident in that Contracting State.

6. In this Article the term "taxation" means taxes which are the subject of this Agreement.

Article 23

MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided

by the Taxation Laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.

2. The competent authority shall endeavour, if the objections appear to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Agreement.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 24

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall, upon request, exchange such information/being information available under the respective Taxation Laws of the Contracting States/as is necessary for carrying out the provisions of this Agreement or for the prevention of fraud, or the like, in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those, including a court or administrative body, concerned with assessment, collection, enforcement or prosecution in respect of those taxes or the determination of appeals in relation thereto.

2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on one of the Contracting States the obligation:

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

Article 25

DIPLOMATIC AND CONSULAR PRIVILEGES

Nothing in this Agreement shall affect the privileges of diplomatic or consular officials under the general rules of international laws or under the provisions of special agreements.

Article 26

ENTRY INTO FORCE

1. This Agreement is subject to ratification and the instruments of ratification will be exchanged at Kuala Lumpur.

2. The Agreement shall enter into force upon the exchange of instruments of ratification and its provisions shall thereupon have effect:

- (a) in Poland, as respects Polish tax on or after the first day of January 1977;
- (b) in Malaysia, as respects Malaysian tax for any year of assessment beginning on the first day of January 1978 and subsequent years of assessment.

Article 27

TERMINATION

This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement, through diplomatic channels, by giving to the other Contracting State, notice of termination on or before the 30th June of any calendar year from the fourth year from the year in which the Agreement entered into force. In such event, the Agreement shall cease to have effect:

- (a) in Poland--
as respects Polish tax for the year following that in which such notice is given and subsequent years;
- (b) in Malaysia—
as respects Malaysian tax for the year of assessment next following that in which such notice is given and subsequent years of assessment.

In witness whereof the undersigned, duly authorised thereto, by their respective Governments, have signed the present Agreement.

Done in duplicate at Warsaw this sixteenth day of September 1977 each in the Polish, Bahasa Malaysia and English languages the three texts being equally authoritative.

PROTOCOL

At the time of signing the Agreement between the Government of Malaysia and the Government of the Polish People's Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of the Agreement:

1. The competent authorities of both Contracting States may, from time to time, mutually agree on any project for the promotion of industrial development which is wholly or mainly engaged in activities falling within one of the following classes--

- (a) manufacturing, assembling and processing;
- (b) construction, civil engineering or ship-building; or
- (c) electricity, hydraulic power, gas or water supply, and in such case, may agree to any exemption or reduction of tax in respect of the income or profits arising from such project.

2. In connection with Article 5 "Permanent establishment" it is agreed that:

- (a) the term "permanent establishment" shall include a building site or construction, installation or assembly project which exists for more than 6 months;
- (b) an enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on supervisory activities in that other Contracting State for more than 6 months in connection with a construction, installation or assembly project which is being undertaken in that other Contracting State.

3. In connection with Article 9 "Shipping and air transport":

The agreed principles contained therein shall also cover the turnover tax applicable in the Polish People's Republic in accordance with the provisions of paragraph 8, sub-paragraphs 1 and 2 of the Order of the Minister of Finance of 2nd November 1973 on the taxation of persons having their residence abroad and obtaining income in the territory of the Polish People's Republic.

4. In connection with Article 10 "Dividends":

- (a) where a dividend was paid by a company which was resident in both Malaysia and Singapore and the meeting at which the dividend was declared was held in Malaysia, or where a dividend was paid by a company which was resident in Singapore and at the time of payment of that dividend the company declared itself to be a resident of Malaysia for

the purposes of Article VII of the Agreement between the Government of Malaysia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed in Singapore on 26 December 1968, the dividend shall be deemed to have been paid by a company which is a resident of Malaysia;

- (b) where a dividend was paid by a company which was resident in both Malaysia and Singapore and the meeting at which the dividend was declared was held in Singapore, or where a dividend was paid by a company which was resident in Malaysia and at the time of payment of that dividend the company declared itself to be a resident of Singapore for the purposes of Article VII of the Agreement between the Government of Malaysia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed in Singapore on 26 December 1968, the dividend shall be deemed to have been paid by a company which is not a resident of Malaysia.

5. In connection with Article 11 "Interest":

The term "approved loan" means any loan or other indebtedness approved by the competent authority of Malaysia as being made or incurred for the purpose of financing development projects or for the purchase of capital equipment for development projects in Malaysia. The term "long-term loan" means any loan made or funds deposited as defined in section 2 of the Income Tax Act 1967 of Malaysia.

6. In connection with Article 12 "Royalties":

The approved royalties referred to in paragraph 3 of Article 12 means royalties as defined in paragraph 5(a) of that Article which are payable for the promotion of industrial development in Malaysia by an enterprise which is wholly or mainly engaged in any of the activities mentioned in paragraph 1 of this Protocol, and approved by the competent authority of Malaysia.

7. In connection with Article 17 "Governmental functions".

Services rendered in connection with any trade or business carried on by the Government of a Contracting State for the purposes of profit shall not be regarded as services rendered in the discharge of functions of governmental nature.

8. In connection with Article 21 "Elimination of double taxation":

- (a) any income or dividend which is exempt from Malaysian tax by virtue of the provisions of the Investment Incentives Act 1968 of Malaysia so far as they were in force on, and have not been modified since, the date of

signature of the present Agreement, or have been modified only in minor respects so as not to affect their general character, or by virtue of any other provisions which may subsequently be made granting an exemption which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if they have not been modified thereafter or have been modified only in minor respect so as not to affect their general character, shall be exempt from Polish tax;

- (b) any interest which is exempt from Malaysian tax in accordance with paragraph 3 of Article 11 shall be exempt from Polish tax;
- (c) any royalty which is exempt from Malaysian tax in accordance with paragraph 3 of Article 12 shall be exempt from Polish tax.

In witness whereof the undersigned, duly authorised thereto, by their respective Governments, have signed this Protocol.

Done in duplicate at Warsaw this sixteenth day of September 1977 each in the Polish, Bahasa Malaysia and English languages the three texts being equally authoritative.